A Bill to amend the law relating to Partition in Mysore.

Preamble.

Whereas it is expedient to amend the law relating to Partition; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent and commencement.

1. (1) This Regulation may be called "The Partition Regulation, 19 ".

(2) It extends to the whole of Mysore; and

(3) It shall come into force at once. But nothing herein contained shall be deemed to affect any law providing for the partition of immovable property paying revenue to Government.

Savings.

Power to Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Regulation, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition suit by transferee of share in dwelling house.

4. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit, and direct the sale of such share to such shareholder and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the C shall follow the procedure prescribed by sub-section (2) of the last foregoing se

Representation of parties under disability.

5. In any suit for partition, a request for sale may be made, or an unde ing, or application for leave, to buy may be giv made on behalf of any party under disability b person authorised to act on behalf of such pa such suit, but the Court shall not be bound to comply with any such re undertaking or application, unless it is of opinion that the sale or purchase w for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

6. (1) Every sale under section 2 shall be subject to a reserved biddin the amount of such bidding shall be fixed b Court in such manner as it may thin varied from time to time.

(2) On any such sale, any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

7. Save as hereinbefore provided, when any property is directed to be sold under this Regulation, the procedure prescribed therefor by rules made by the Chief Court in this behalf from time to time shall, as far as practicable, be adopted. Until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees shall be followed.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

9. In any suit for partition, the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Regulation.

Application of Regulation to pending suits.

10. This Regulation shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

STATEMENT OF OBJECTS AND REASONS.

The provisions contained in Section 396 of the Code of Civil Procedure regulate the mode of effecting a partition of immovable property not paying revenue to Government, in execution of decrees of Civil Courts. Under these provisions it is incumbent on the Courts to award a share in the property to each one of the sharers though under certain circumstances, to equalise the value of such shares, money compensation can be awarded in addition. It has been represented that a division of the property into as many shares as there are parties entitled to a share is, at times, impracticable and that in the interests of the parties themselves it is desirable that the Court must possess a discretion to sell the property and divide the proceeds. Several such cases have occurred in the City of Mysore. Petty houses where not more than one family can reside have had to be partitioned off and divided among several co-owners, with the result that free access to light and air is shut off and the house is rendered insanitary.

To provide against such evils, Government have thought it desirable to adopt the recommendation of the Select Committee that considered the Civil Procedure Bill and the Bill is the outcome of this decision. It is based on the Partition Act of British India of 1893 and enables (clause 2) the Courts to sell under certain circumstances the properties sought to be partitioned and distribute the proceeds. The sale is to be ordered only when parties interested in at least one-half of the property apply and when the Court is satisfied that it is to the interest of all the parties that the property should be sold.

If any of the co-sharers are reluctant to have the property sold it is open to them [clause 3 (1)] to buy in the shares of the other parties at a valuation to be made by the Court and a similar right is also given [clause 4 (1)] in cases where a stranger to the family, having acquired a share in the family dwelling house, sues for partition. The interests of the parties are further protected by clause 6 (3) which enacts that where at the sale the same bid is offered by several persons, the bid of a co-sharer, if there is one, shall be accepted as the final bid.

Clause 6 (1) requires that an upset price shall be fixed on each property at the sale in order that it might not be sold for inadequate prices.

The provisions of any special law regarding partition of immovable property paying revenue to Government (*vide* section 265, Civil Procedure Code and sections 122 and 123, Mysore Land Revenue Code) are not affected by the Bill.